IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

CARPENTERS DISTRICT COUNCIL OF KANSAS CITY PENSION FUND, et al.	)
Plaintiffs,	)
v.	) Case No: 16-707-CV-W-RK
ARTISAN II, LLC, d/b/a Artisan Construction Services,	)
Defendant.	)

ANSWER
and COUNTERCLAIM

I. Answer

COMES NOW Defendant, Artisan II, LLC, d/b/a Artisan Construction Services ("Defendant"), by and through its attorney of record, and in response to Plaintiffs' First Amended Complaint answers as follows:

Count I:

1. Admit.
2. Without knowledge or information sufficient to admit or deny.
3. Without knowledge or information sufficient to admit or deny.
4. Without knowledge or information sufficient to admit or deny.
5. Without knowledge or information sufficient to admit or deny.
6. Admit.
7. Admit.
8. Admit.
9. Admit.
10. Deny.
11. Admit

12. Admit.

13. Deny.

14. Deny.

15. Deny.

16. Deny.

17. Admit.

18. Deny.

Count II:

1. Without knowledge or information sufficient to admit or deny.

2. Without knowledge or information sufficient to admit or deny.

3. Incorporate and adopt previous answers to listed paragraphs.

4. Deny.

Count III:

1. Without knowledge or information sufficient to admit or deny.

2. Without knowledge or information sufficient to admit or deny.

3. Incorporate and adopt previous answers to listed paragraphs.

4. Deny.

Count IV:

1. Without knowledge or information sufficient to admit or deny.

2. Without knowledge or information sufficient to admit or deny.

3. Incorporate and adopt previous answers to listed paragraphs.

4. Deny.

Count V:

1. Admit.

2. [missing]

3. Incorporate and adopt previous answers to listed paragraphs.

4. Deny.

Further answering, Defendant denies each and every allegation of Plaintffs' First Amended Complaint not specifically admitted herein.

Affirmative Averments/Defenses:

1. Affirmatively pleading, Defendant avers that Plaintiff has failed to state a claim upon which relief can be granted.

2. Defendants have paid (and overpaid) all contributions due to Defendants.

3. Contrary to the allegations of Plaintiffs' Complaint, Plaintiffs filed this suit prior to seeking or requesting an audit of Defendant's books, and no audit demand was refused by Defendant. Therefore, certain of the remedies requested by Plaintiffs are not allowed or authorized.

WHEREFORE, having fully answered and responded to all allegations contained in Plaintiffs' First Amended Complaint, Defendant requests judgment on Plaintiffs' First Amended Complaint, and for any other relief the Court deems just and proper.

II. Counterclaim:

COMES NOW Defendant, by and through its counsel of record, and for its Counterclaim against Plaintiffs, states as follows:

1. Defendant is a limited liability company doing business as Artisan Construction Services, with its principal place of business located at 1700 W. Walnut, Springfield, Missouri.

2. Plaintiffs are various benefit funds (through their Trustees) associated with the Carpenters' District Council of Greater St. Louis and Vicinity, an affiliate of the United Brotherhood of Carpenters and Joiners of America ("Union").

3. Defendant brings this action pursuant to Section 403 of ERISA, 29 U.S.C. Section 1103, and the corresponding common law cause of action, to request repayment/restitution to Defendant by Plaintiff of the excess payments mistakenly made by Defendant to Plaintiffs.

4. During 2015 and 2016, Defendant employed carpenters for whom Defendant was required by a collective bargaining agreement to make fringe benefit contributions to Plaintiffs' Funds.

5. The collective bargaining agreement applied only to work performed by Defendant's employees in certain counties in Missouri.

6. The online portal of Plaintiffs required to be used by Defendant to report hours worked by carpenter employees of Defendant, and calculating the fringe benefit amounts due on said hours, required a designation of the geographic county in which the work was performed, but only allowed designation of the counties covered by the collective bargaining agreement.

7. Because the online portal of Plaintiffs did not allow designation of out-of-jurisdiction work performed by Defendant's carpenter employees, Defendant inquired of the local Union business agent/representative as to how to report such out-of-jurisdiction hours of work. The Union business agent/representative directed Defendant to report the hours as having been worked in Greene County, Missouri. Defendant followed those directions, which resulted in Defendant reporting and paying fringe benefits payments on carpenters' hours worked which were out-of-jurisdiction of the collective bargaining agreement.

8. Defendant has learned through the audit requested by Plaintiffs after the filing of this suit that it was a mistake of fact and law to report out-of-jurisdiction hours as hours worked in Greene County, Missouri.

9. As a result of the mistaken reporting, Defendant paid excess contributions (overpaid) to Plaintiffs during the period of January 2015 through June 2016, on approximately 11,168

out-of-jurisdiction hours, in the total contribution amount of approximately $177,012.80 (11,168 hours x $15.85 per hour).

10. During the audit by Plaintiffs after the filing of this suit, Plaintiffs requested Defendant to outline the number of hours worked out-of-jurisdiction under the collective bargaining agreement. Defendant researched, collated, and reported the out-of-jurisdiction hours mistakenly reported, and requested a refund (restitution) from Plaintiffs of said mistakenly paid excess contributions/overpayments.

11. Plaintiffs have refused to refund to Defendant the mistakenly paid excess contributions/overpayments.

12. Plaintiffs' refusal to refund/return to Defendant the excess contributions is inequitable, and required restitution to Defendant would be equitable.

WHEREFORE, Defendant prays for the following Orders, Judgments, and Decrees:

A. For judgment against Plaintiffs in the amount of $177,012.80 (less any portion of that amount already paid by Plaintiffs to participants) refunding the excess contributions/overpayments made by Defendant;

B. For judgment against Plaintiffs for reasonable attorney's fees incurred in this action, and for all other costs incurred in this action;

C. For judgment against Plaintiffs for pre-judgment interest on the amount of refunded excess contributions/overpayments made by Defendant; and

D. For such other relief as the Court deems just and proper.

Respectfully submitted,

LAW OFFICES OF RICK E. TEMPLE, LLC

By: /s/ Rick E. Temple
Rick E. Temple
Missouri Bar No. 33257

1358 E. Kingsley St., Ste. D
Springfield, MO 65804

Telephone: (417) 877-8988

Attorney for Defendant

DATED: This 24th day of January, 2017.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Answer and Counterclaim** was served on the following individuals, to wit:

Michael G. Newbold, Esq.
John J. Westerhaus, Esq.
Arnold, Newbold, Winter & Jackson, P.C.
1100 Main St., Ste. 2001
Kansas City, MO 64105

by electronic notice on this 24th day of January, 2017.

/s/ Rick E. Temple
Rick E. Temple